MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2017/2018 SESSION

UCV4612 – CIVIL PROCEDURE I

(All Sections / Groups)

14 OCTOBER 2017
Reading Time: 9.00 AM – 9.15 AM
(15 Minutes)
Answering Time: 9.15 AM – 12.15 PM
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 5 Questions only.

3. This Question paper consists of 2 sections. Attempt ONE question only in Section A and all THREE questions in Section B. The distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall CLEAN and ORIGINAL copy of Rules of Court 2012. Students are not allowed to lend or borrow statutes during the Examination.

5. Please write all your answers in the Answer Booklet provided.

SECTION A (Answer ONE question only)

QUESTION 1

(a) On 14 June 2011, STU went for a surgery on his left eye after being advised by one Dr CYC, an eye specialist at Alpha Eye Specialist Centre Sdn. Bhd. (AESSB) at Seremban. The surgery, which was a cataract surgery with multifocal intraocular lens implantation, was conducted by Dr CYC himself. After the surgery, STU complained of discomfort in the left eye but he was told by Dr CYC that the condition was normal. On his last visit on 14 July 2011 to AESSB to consult Dr CYC on the condition of his left eye, STU was told that Dr CYC had ceased working there and had moved to Beta Specialist Eye Centre (BSEC) in Kuala Lumpur. STU failed to locate Dr CYC and so he saw other suitable eye specialists from time to time. He finally saw one Dr Michael, an eye specialist at BSEC. This took place on 3 February 2013. Ten months after that visit, that is, on 3 December 2013, Dr Michael had performed a gas injection operation on STU's left eye, purportedly because the cataract surgery done on STU had caused him to suffer blurred and shadowing vision with foreign body sensation on the eye.

STU is seeking to claim for general damages, aggravated damages and special damages of RM8,218. Advise STU on the following:

(i) the mode of originating process and the court in which to commence the action;

(5 marks)

(ii) the parties to the action;

(5 marks)

(iii) whether the action is time-barred.

(8 marks)

(b) "Third-party proceedings for contribution should be regarded as independent of and separate from proceedings by a plaintiff against a defendant."

Mat Abu Bin Man v Medical Superintendent, General Hospital, Taiping, Perak & Ors [1989] 1 MLJ 226, 228 per Hashim Yeop Sani Ag CJ (Malaya)

Discuss.

(7 marks)

(Total: 25 marks)

Continued...

QUESTION 2

(a) NEH died intestate on 23 November 1992. Subsequently, letters of administration were issued to OLC and NHS. OLC is the wife of NEH and NHS is their only daughter. OLC married NEH in 1948 through a Chinese customary marriage. The marriage was later registered in 1976 under the Civil Marriage Ordinance, 1952. NAY however claims that she is the lawful daughter of NEH by reason of NEH's marriage with her late mother. She claims that NEH had married her mother sometime in 1960, also through a Chinese customary marriage. NAY has commenced an action, by way of originating summons, to be included as one of the administrators of the estate of NEH, and also as one of his beneficiaries.

Based on the above, discuss the following:

(i) the nature of the action commenced by NAY;

(5 marks)

(ii) whether the action commenced by NAY should be by way of originating summons.

(10 marks)

(b) Order 15 rule 6A of the Rules of Court 2012 serves to overcome the difficulties of suing the estate of a person who had died before the commencement of the action and in whose estate no grant of probate or administration had been made.

Discuss.

(10 marks)

(Total: 25 marks)

Continued...

SECTION B (Answer all THREE questions)

QUESTION 3

(a) Pursuant to an application by Meriah Venture Sdn. Bhd. (MVSB), Bank Raya Bhd. (BRB) in Melaka Raya granted to MVSB banking facilities in the form of loan stock, term loan, overdraft, trust receipt and bankers acceptance, all amounting to RM9.4 million ('the facilities'). The facilities were secured by legal charges over several landed assets situated in Muar and guarantee by THI, who was at all material times MVSB's director. Vide a letter dated 17 June 2013, MVSB admitted default in the repayment of the facilities to BRB. The latter had demanded repayment of the facilities vide notices but the notices of demand were not complied with. On 15 November 2013, BRB commenced an action against MVSB and THI in the High Court at Melaka. Judgment in default of appearance (JID) was obtained against MVSB on 11 April 2014 and against THI on 17 February 2014. The JID was served on THI on 2 April 2014.

On 17 December 2014 THI filed an application to set aside the default judgment obtained against him. According to THI, the default judgment had been irregularly obtained as the writ and statement of claim had been served on him at the wrong address, as his correct address was at Tangkak. According to BRB, the writ had been served on THI by AR registered post, addressed to him at his last known address at Muar.

Based on the above –

(i) assess whether the High Court at Melaka was the proper forum to hear the matter;

(8 marks)

(ii) examine whether service of the writ and statement of claim was valid;

(7 marks)

(iii) examine the effect of a delay, if any, in filing the application to set aside the JID.

(5 marks)

(b) The Plaintiff served on the Defendant the writ and statement of claim on 18 May 2017. On 31 May 2017, the Defendant served on the Plaintiff a memorandum of appearance. The memorandum of appearance was filed in the court on 2 June 2017. On 5 June 2017 the Plaintiff entered a judgement in default (JID) against the Defendant.

Examine whether the JID is regular.

(5 marks)

(Total: 25 marks)

Continued...

QUESTION 4

(a) The Plaintiff is in the business of supplying equipment and goods for the building of structures in the oil and gas industry. The Defendant carries on a business connected to works for the building of structures in the oil and gas industry. The Plaintiff was appointed by the Defendant to supply equipment to the Defendant in 3 projects. The Plaintiff alleges that it had delivered all the goods and services to the Defendant and issued Invoices based on the Purchase Orders of the Defendant. However, the Defendant failed to make payment for all the goods and services supplied by the Plaintiff for the 3 projects.

Having commenced an action against the Defendant, the Plaintiff is seeking a prompt and expeditious disposition of the action against the Defendant. Explain the following:

(i) the procedure to be adopted and the preliminary requirements for such procedure;

(10 marks)

(ii) the principle to be followed by the court under such procedure.

(8 marks)

(b) Explain what interpleader proceeding is.

(7 marks)

(Total: 25 marks)

QUESTION 5

(a) The Plaintiff has caused a specially indorsed writ to be served on the Defendants, claiming against the First Defendant for an order of specific performance of an agreement dated 21 March 2015 whereby the First Defendant agreed to buy from the Plaintiff 557,779 shares in Perfora Pilates Sdn. Bhd. (PPSB) for RM780,890.60, of which a sum of $78,089 had been paid as a deposit, and claiming against the Second Defendant (as guarantors) for the balance of the purchase price which has not been paid amounting to $702,801.60, with interest. The facts are not disputed. The Plaintiff is seeking for a summary judgment to compel the First Defendant to complete the purchase of the shares.

Advise the Plaintiff on the procedure to be adopted and the requirements to be satisfied by the Plaintiff for the summary judgment.

(8 marks)

Continued...

(b) "[A] judgment obtained under O. 14 is not a judgment obtained in default..."

Eu Hoong Chwee v Chua Say Tiong [1968] 2 MLJ 12, 13 per Raja Azlan Shah J (as he then was)

Explain.

(7 marks)

(c) The writ and statement of claim was served on the Defendant personally. Having failed to enter an appearance, a judgment in default of appearance (JID) was entered against the Defendant. The JID was then served on the Defendant by prepaid registered post on 3 May 2017. The Defendant denied receiving the JID. On 2 June 2017 the Defendant applied to set aside the JID.

Advise the Defendant on the principle on the setting aside of a judgment in default.

(10 marks)

(Total: 25 marks)

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